the appellant, that Madam Choo occupied one-fifth of the premises.

The submission for the appellant was that as the learned District Judge had found that Madam Choo occupied half the floor area of the first floor, on the evidence that she had equal access to and enjoyment of the ground floor with the appellant and his family, he should have found that Madam Choo was in exclusive possession of half or at least 40% of the whole of the premises. The evidence relied upon by counsel for the appellant was that of the appellant that Madam Choo had access to the kitchen, toilet and bathroom in the premises; that she entertained her friends in the sitting room on the ground floor; that at times she ate with the appellant and his family in the dining room on the ground floor; and that she used the telephone and watched television downstairs. The point was made that had such a finding been made as submitted, on the formula already mentioned, the appellant would not be in breach of section 15(1) (g) of the Act.

Now, in his judgment, the learned District Judge has stated that the first consideration he had was to find out, in proportion to the whole of the premises, how much space had been "let out" to Madam Choo. In determining that floor area, he said: "Although she had access to other parts of the house, Madam Choo only occupied the front room in the first floor".

In my opinion, on the evidence before him, the learned District Judge was right in holding that only the front room on the first floor was let to Madam Choo because she had exclusive possession only of that room in the premises. Whilst Madam Choo had access to the common areas in the premises, those areas were in fact, "retained" by the appellant and were "not sublet" to Madam Choo (for the words in quotes, see section 15(1) (g) of the Act). Therefore, the learned District Judge had rightly disregarded the common areas in the premises and the other evidence of the appellant which related to the gratuitous use by Madam Choo of the ground floor of the premises in determining what part of the premises was sublet by the appellant to Madam Choo.

For the reasons I have given, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chan Goh & Co.; Lee & Lim.*

HOWE YOON CHONG v. THE CHIEF ASSESSOR, SINGAPORE & ANOR.

[O.C.J. (Lai Kew Chai J.), October 24, 1984]
[Singapore – Originating Motion No. 53 of 1980]

Property tax – Annual value – Renovation – Increase in annual value – Administrative practice – Equal protection – Property Tax Act (Cap. 144), ss. 2, 17(4), 18(7), & 19(3) – Constitution of Singapore, art. 12(1).

In this case the appellant, Howe Yoon Chong, ("the owner"), is the owner of the subject property, a two-storey detached bungalow known as No. 9, Binjai Walk. It is the home of the owner and was built in 1966 on a site of 18,902 sq. ft. in a high class residential estate called Binjai Park. The property was ascribed an annual value of $2,400 on its completion in 1966. Following a general reassessment in 1970 of all properties in Binjai Park, the annual value of the property was raised to $8,400. Since the property was owner-occupied, the yearly property tax payable was $552, and the owner enjoyed the concessions granted by the Comptroller of Property Tax (the 2nd respondent) to all owner-occupiers in Singapore. In 1970 the Chief Assessor (the 1st respondent) ascribed to the building in the property the "reduced" area of 2,340 sq. ft., thus producing a unit rate of annual value of $3.59 per sq. ft.

In December 1975, the owner carried out substantial alterations and additions to the property at the cost of $48,000. The bedrooms increased from two to five, and the floor area had increased to 5,554 sq. ft. For the purpose of calculating the annual value, the reduced area was put at 4,526 sq. ft. The owner gave notice of the renovation works to the Chief Assessor under s. 17(4) of the Property Tax Act.

After receipt of this notice, the Chief Assessor by a letter dated August 23, 1976 gave the owner notice that he proposed amending the 1976 Valuation List by increasing the annual value of the property from $8,400 to $28,800 effective January 1, 1976. On the same day, the Comptroller gave notice under s. 19(3) of the Act that property tax of $1,224 per year was payable with effect from December 1, 1975. The Chief Assessor and the Comptroller both disallowed the owner's objections, whereupon the owner appealed to the Valuation Review Board. The Board dismissed his appeals based on three main issues, holding that (a) the Chief Assessor did not err in law and in fact in increasing the annual value of the property in comparison with other similar properties in Singapore, (b) the proposed annual value of $28,800 was not manifestly excessive or wrong in law and should not remain at $8,400, and (c) the proposed valuation or increased valuation of the property did not violate the Constitution or the Act.

Against that decision of the Board the owner appealed to the High Court. Unlike *Howe Yoon Chong* v. *Chief Assessor*[3] where the owner was unsuccessful in seeking to invalidate the entire valuation list, in the present case he complained that by reason of an aspect of the administrative practice of the Chief Assessor he had not been accorded the equal protection of the law under Article 12(1) of the Constitution, the supreme law of Singapore. The owner contended that he had retained his owner-occupier status at all mate-

rial times. The property should not have been assessed on rental values current in 1976, which took him out of the owner-occupier class. He said that he was unfairly treated if he were to be foisted with the increase of a notional rental value. On his contention, the unit rate of $3.59 should have been multiplied by the new reduced area of 4,526 sq. ft., which would have produced the annual value of only $16,240, which should have been applied until the next general reassessment of annual values in 1979 or 1980 of all properties in Binjai Park.

Held: allowing the appeal: (1) the administrative practice carried out in this case was inconsistent with the provisions of Art. 12(1) of the Constitution. The owner should have been accorded the privilege of the owner-occupiers until the next "general assessment" in 1979 or 1980. Any increase in the annual value of the property should have been limited to the unit rate per sq. ft. current in 1970 which should be applied to what is technically called the new "reduced" area. The owner, as an owner-occupier, was similarly situated in all material respects with other owner-occupiers whose properties were fortuitously not renovated, and he should not be treated differently;

(2) the decision of the Privy Council in the other case of the owner would show that (a) the *ratio decidendi* of that case, limited to the facts which the owner was able to prove in that case, does not apply to the present case; and (b) the *obiter dicta* in that case, which were inapplicable in that other case, fairly and squarely govern the facts in this case. The Valuation Review Board failed to appreciate these crucial distinctions and were accordingly wrong in law;

(3) the Privy Council in stressing the supremacy of the provisions of the Singapore Constitution pointed out that, in its view, an intentional and systematic undervaluation of the type and nature considered by the U.S. Supreme Court in *Sioux City Bridge Co.* v. *Dakota County*(1) would be contrary to the equal protection clause;

(4) in the circumstances, the appeal is allowed with costs and, applying the principle of uniformity enunciated in the *dicta* of Lord Fraser of Tullybelton, the annual value of the property for the year 1976 should be $16,240.

Cases referred to:

(1) *R.* v. *Paddington Valuation Officer Ex parte Peachey Property Corporation Ltd.* [1966] 1 Q.B. 380, 412-413.
(2) *Ladies Hosiery and Underwear Ltd.* v. *West Middlesex Assessment Committee* [1932] 2 K.B. 679.
(3) *Howe Yoon Chong* v. *The Chief Assessor, Property Tax, Singapore* [1981] 1 M.L.J. 51.
(4) *Lilley and Skinner Ltd.* v. *Essex County Valuation Committee* (1935) 51 T.L.R. 432, 434.
(5) *Howe Yoon Chong* v. *Chief Assessor* [1979] 1 M.L.J. 207.
(6) *Sioux City Bridge Co.* v. *Dakota County* [1922] 260 U.S. Reports 441; 67 Law Ed. 340.
(7) *Cumberland Coal Co.* v. *Board of Revision* 284 U.S. 23.

VALUATION REVIEW BOARD.

P. Selvadurai for the appellant.
Mrs. Lucy Hangchi for the respondent

Cur. Adv. Vult.

Michael Khoo Kah Lip (Chairman) (delivering the Decision of the Board): The appellant, Howe Yoon Chong, is the owner of premises known as No. 9 Binjai Walk, a two-storey detached bungalow built in 1966 on a site of 18,902 square feet and located in an established good class residential estate. He has at all material times been in occupation of the property and as such, in the payment of property tax, he was entitled to a concessionary rate known as the "owner-occupier's rate" of 23% instead of 36% upon the annual value of his property. This concessionary rate was prescribed by the Minister for Finance in a series of orders published in the Gazette, in exercise of the power under the proviso to section 8 of the Property Tax Act (Cap. 144).

By a notice dated August 23, 1976 (exhibit A3) the Chief Assessor notified the appellant that he was proposing to amend the 1976 Valuation List by increasing the annual value of his property from $8400 to $28800, this proposal to take effect from January 1, 1976. On even date, the Comptroller of Property Tax (hereinafter referred to as "the Comptroller") issued a notice to the appellant (C 001032) under section 19(3) of the Act notifying him that $612 was payable as property tax upon the authentication of the annual value as proposed by the Chief Assessor for the period December 1 to December 31, 1975.

The appellant took objection to these proposals but both the Chief Assessor and the Comptroller refused to amend their respective proposals, and by a letter dated November 30, 1976 (Exhibit A4), the Comptroller informed the appellant that the tax payable at 36% upon the annual value (as prescribed by section 8 of the Act) was $5184 half-yearly (or $10368 annually). However, "as a further concession to owner-occupied dwelling house", the Comptroller decided that "the full tax will not be collected but only the reduced amount of $533.60 half-yearly (or $1067.20 annually)", and for the back tax for December 1975, the reduced amount of $88.93.

Upon these refusals to amend their proposals, the appellant now appeals to this Board.

Grounds of the appeals

As we understand it from his ground of appeal, the appellant's dissatisfaction with the decision of the Chief Assessor revolves round three main issues –

(a) The Chief Assessor erred in law and in fact in increasing the annual value of his property in comparison with other similar properties in Singapore;

(b) The proposed annual value of $28800 is manifestly excessive and wrong in law and should remain at $8400; and

(c) The proposed valuation or increased valuation of the appellant's property is *ultra vires* the Property Tax Act and the Constitution of the Republic of Singapore.

In the appeal against the Comptroller's decision which appears to be consequential to the first appeal, the appellant contends that the tax payable, if any, for the period December 1 to December 31, 1975 should be assessed on the annual value of $8400 and not $28800.

In view of the arguments raised by the appellants before the Board, it is necessary to set out briefly the history of the valuation of the property and the amount of tax paid by the appellant.

History of the property's annual value

On its completion the property was first assessed to tax at an annual value of $2400 and as it was owner-occupied, the appellant paid property tax at the concessionary rate of 23% of the annual value amounting to $552 per annum. This annual value was ascribed to the property in the Valuation Lists of the years following until 1970, when following a general reassessment of all properties in Binjai Park, it was raised to $8400 with effect from February 9, 1970 after an unsuccessful appeal to this Board. The Comptroller of Property Tax informed the appellants by letter dated February 9, 1970 (exhibit A2) that the tax payable "computed on the annual value of $8400 at 23% is $1932 annually or $966 half-yearly", but that as a further concession to an owner-occupied property, the full tax would not be collected from him but only a reduced amount of $276 half-yearly, or $552 annually. Though the annual value had been increased, the tax collected from the appellant by the Comptroller had not because of this "further concession".

The annual value of $8400 remained in the Valuation List until 1975 and the appellant continued to pay tax on the property at the "double" concessionary annual amount of $552 without objection.

Reason for proposed revaluation

In 1975, the appellant made substantial alterations and additions to his premises at a cost of $48000 and though the works were completed in December 1975, it was not until February 12, 1976 that the appellant's architects, Messrs. Wong and Lee Architects, wrote to the respondent, the Chief Assessor (exhibit R2), notifying him of the date of completion of the works. This notice was, according to section 17(4) of the Act, required to be given within fifteen days from the completion of renovation works.

Upon receipt of this information the Chief Assessor proceeded to reassess the property in accordance with section 18 of the Act, the relevant sub-sections being as follows:–

"18.-(1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any person interested or otherwise, and in the manner hereinafter provided, amend the Valuation List accordingly.

....

(7) For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where –

(a) The Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by –

....

(iii) the increased or decreased rental obtained in respect of the letting out of that or similar property;

... .

(c) any new building is erected or any building is rebuilt, enlarged, altered, improved or demolished;

Dennis Tan (RW1), executive valuer in the Property Tax Department, who in 1976 was in charge of the valuation areas that included Binjai Park, one of the seven administrative areas de-

signated as such for property tax purposes, testified that on comparing the plans submitted by the architects to his department in 1966 when the building was constructed, with that submitted for the renovation works in 1974, and after inspection of the property, he found that the works had resulted in an increase of the net floor area of the building from 3547 square feet to 5554 square feet. Among other things there was an increase in the number of bedrooms by two to five. These facts were not disputed by the appellant.

It was not disputed by the appellant and is quite apparent that from the facts, that the premises in question had been "enlarged, altered and improved" by December 1975. The Valuation List had thereby become "inaccurate in a material particular" and the Chief Assessor was thus empowered by section 18 to "amend the Valuation List accordingly". The Comptroller's notice under section 19(3) was intended to cover the period from the date of completion of renovation works, i.e. December 1975 until the coming into effect of the proposed annual value on January 1, 1976.

As we find that the Chief Assessor was entitled to amend the annual value of the appellant's property, the next question that arises to be decided is one of valuation, namely what is the annual value to be ascribed to it in 1976?

The allegation that $28800 is manifestly excessive

The appellant's main witness was one John Murray Carter (AW1), a chartered surveyor, who claimed that he was testifying "as expert witness for the appellant". For the purpose of these appeals he was instructed "to advise on the correct annual value which should be entered in the Valuation List in respect of No. 9 Binjai Walk with effect from January 1, 1976", but during the course of his testimony he gave three different views as to what he thought the annual value was.

His first opinion on the annual value appears in his "Report and Valuation" which he presented before the Board (exhibit A7). This report is in two parts, the first dealing with what he terms as the *"real" annual value* of the property which he ascertained from the amount of property tax paid by the appellant, and the second consisting of an attack on the Chief Assessor's methods of arriving at the proposed annual value of $28800 as found in his report to the Board (exhibit R1).

(a) *"Real" annual value*

Despite acknowledging the fact that the original annual value was raised from $2400 to $8400 in 1970 after an unsuccessful appeal to this Board, and that the increased annual value had been entered into the Valuation Lists from 1970 to 1975, Carter expressed the opinion that "in fact, the annual value was not increased to $8400 but remained at $2400" (see page 2 of his report). He inferred that since the concessionary rate of tax was 23% and because the Comptroller of Property Tax continued to collect property Tax at the sum of $552, as evidenced by his letter of February 9, 1970 (exhibit A2), he concluded that the owner continued to be charged to tax at the concessionary rate of 23% on the annual value of $2400.

He added that "Valuation List was amended to show an annual value of $8400 which was, in fact, an incorrect figure and, in consequence the owner was assessed to income tax on the false annual value of $8400 and not on the true annual value of $2400". Because the Comptroller had decided by his letter of November 30, 1976 (exhibit A4) not to collect the full tax on the proposed annual value of $28800 (which at owner-occupied concession of 23% is $6624 annually) but "instead the reduced amount of $533.60" half-yearly (or $1067.20 annually), Carter reasoned that this "reduced amount was actually 23% of $4640." He concluded that since the concession for owner-occupied properties was and still is 23%, that therefore the "correct annual value of the property remained at $2400 from 1970 to 1976 and that the correct annual value of the property with effect from January 1, 1976 was and is $4640".

Carter attempted to reinforce his conclusion by referring to the Comptroller's report to the Board for the second appeal (Appeal No. 959/76) wherein it was stated that though the back tax payable for the month of December 1975 at the rate of 36% of the proposed annual value of $28800 was $612, and since only $88.93 was intended to be collected, this confirmed his view that this amount was the "tax at the concessionary rate of 23% on an annual value of $4640 for one month."

Hinging on to Carter's concept of the "real" annual value Mr. P. Selvadurai for the appellant contended that the "real annual value is an ad-

mission by the Chief Assessor that the annual value of properties are on taxes paid". As there is only one owner-occupier's rate, namely 23%, "the conclusion is that (from exhibit A4), the comptroller has not collected tax on the annual value in the Valuation List but on the real annual value" and that is $8400, not $28800. He made much of the fact that Dennis Tan had signed the report to the Board (R1) on behalf of the Chief Assessor in the appeal against the assessment (Appeal No. 958/76) and also on behalf of the Comptroller of Property Tax in the second appeal (Appeal No. 959/76) and he relied on this fact to buttress Carter's method of arriving at annual value by simply looking at taxes collected.

We find these contentions really startling, especially when it is obvious as Carter himself had realise, that this fiction of the "real" or "correct" annual value, as opposed to "annual value" which is determined in accordance with section 2 of the Act, was not arrived at in accordance with any of the known principles of valuation. It is patently clear that by imputing an annual value to the appellant's property from the tax collected, he has in the process completely confused the functions of the Comptroller of Property Tax with that of the Chief Assessor.

(i) *The owner-occupier's concessions*

Section 8 of the Act stipulates that tax is payable at the rate of thirty-six per cent upon "the annual value of every property entered in the Valuation List". The Minister has pursuant to the proviso in that section directed that concessions be given to the tax payable in respect of owner-occupied properties (vide the Property Tax [Rates for Owner-Occupied Premises] Orders). Over and above those concessions, section 59B enables the Minister *in his discretion,* to "remit wholly or in part, the tax payable by any person – (a) on the ground of poverty; or (b) if he is satisfied that it is just and equitable to do so."

We agree with the respondent that the Minister had clearly done so in respect of the appellant's property as well as that of all owner-occupied ones, and the exercise of this discretion is evidenced by the letter dated February 9, 1970 (exhibit A2). This letter, signed by the Comptroller of Property Tax clearly notified the appellant that the rate of tax payable by him as owner-occupier was "23% instead of 36%" on the annual value of $8400. He was then informed that –

> "the Minister for Finance has agreed that as a further concession to an owner-occupied property, the full tax would not be collected but the reduced amount of $276. You will note therefore that the tax payable by you has not been increased by the Chief Assessor's proposal to amend the annual value of your property."

The intention of this letter could not have been more simply expressed.

(ii) *The segregation of responsibilities*

Section 4(1) of the Act clearly provides that "the Comptroller shall be responsible generally for the carrying out of the provisions of this Act *and for the collection of property tax"* while subsection (2) to that section explicitly states that "the Chief Assessor *shall be responsible for the assessment of annual values of properties for the purposes of this Act"* (emphasis is ours). Section 5 empowers both the Comptroller and the Chief Assessor to "delegate to any person having official duty or being employed in the administration of this Act all or any of the powers, functions and duties by this Act vested in them respectively". The fact that the same person had been delegated both the functions, in this case Dennis Tan, cannot be taken to mean that when he acts in one capacity he is also deemed to be acting concurrently in the other.

In our view, it would be highly ridiculous to suggest that even if the Comptroller was not entitled to collect tax at less than the prescribed rate of 23%, that therefore the annual value if it was properly arrived at in accordance with the Act, must be adjusted downwards to coincide with the amount of tax collected. There can only be one annual value to a property, and that is the one that is assessed by the Chief Assessor and which appears in the Valuation List, duly authenticated.

The answer to Mr. Selvadurai's contention could not have been more clearly spelt out then by the provision of section 4(3):–

> "(3)The Comptroller shall not amend or otherwise vary any annual value ascribed to any property by the Chief Assessor."

(b) *No increase in rental values of owner-occupied properties*

Carter also criticised the Chief Assessor's reliance on the rental evidence of properties in Binjai Park at the material date, which evidence appeared in Appendix B of his report (exhibit

R1) "in support of the incorrect figure of $28,800". The main reason he advanced was that "an investigation of the Valuation List for the Binjai Park Estate and an examination of the actual amounts of tax paid by owners in respect of owner-occupied property (exhibit A5) indicates that the tone of the List for assessments of owner-occupied property is different to *(sic)* the assessments of properties which are let."

He therefore surmised that "No. 9 Binjai Walk has been selected as one owner-occupied property which is to be assessed, not in accordance with the tone of the List for owner-occupied properties but in accordance with the 'tone of the List' for properties which are let."

Carter maintained that between 1970 and 1972 there was a general increase in rental values in Singapore but from the end of 1973 till 1976 "there was in fact a recession in the rental values and in the case of better types of properties rental values fell back to not much above the levels in 1970". No evidence was adduced by him to substantiate his statement. However, on the assumption that the 1970 annual value of $8400 was correct, the rate per square foot of the appellant's property then was $3.59 and he reasoned that therefore "the increase in annual value which can be ascribed to the floor area can be calculated by multiplying 4526 square feet with the unit value of $3.59" and that would produce a revised rental value of $16,248 per annum.

This sum, he maintained, is $12,552 less than the respondent's proposal and represented what the respondent considered to be "the increase in rental value of this property". As "there is a unique situation in Binjai Park in that no two properties are directly comparable" because all properties are built to the individual requirements of their owners, Carter stated that he "would have to make adjustments to arrive at the annual value of each house". He further declared that "individual differences have to be taken into account", though he did not state what they were, if any, between the appellant's property and the comparables relied upon by the respondent.

During the course of his evidence at a later stage of the proceedings, he expressed a third view of the annual value by applying the Chief Assessor's unit rate of $6.37 p.s.f. to what he considered as the reduced area of the premises, namely 3955 s.f., thus giving it an annual value of $25,193.35 or $2,100 p.m. After making a 25% "end adjustment" for what he calls "surplus accommodation" because there are six bedrooms in the appellant's house whereas the "normal facility" for a similar property has 4.5, he arrived at a reduced annual value of $18,900 or $1575 p.m.

However, when cross-examined, he emphatically stated that he had applied the unit rate of $6.37 p.s.f. because appellant's "counsel asked me to do so. That is not my opinion of the value. Frankly I do not know how he (the Chief Assessor) arrived at $6.37 p.s.f". Notwithstanding this, in answer to a question put to him by the Board, he stated that his "spot value" of the property was $1500 per month in 1976.

It became quite apparent at the end of his testimony that his evidence was as riddled with contradictions as was Mr. Selvadurai's submission. We are accordingly left with only the Chief Assessor's valuation to assist us in determining the annual value.

The Chief Assessor's valuation

The Chief Assessor's valuer, Dennis Tan, explained how the proposed annual value of $28,800 was arrived at. He had made a study of actual rentals of two-storey bungalows that were let out, that is to say, the rentals of comparables (as listed out in Appendix B of his report, R1). Rental evidence of the comparables ranged from the sum of $2,200 for an unfurnished letting to $4,750 on a furnished basis. He compared these properties with that of the appellant's, with all its improvements and additions and he was of the opinion that a fair rental value of the appellant's property at the material time as $2,400 p.m. unfurnished, or $28,800 per annum. Applying this estimate to its reduced floor area of 4526 square feet, he obtained a rate per square foot of $6.37 which he considered fair and reasonable because the rate per square foot of the comparable properties, also based on their reduced floor areas, was between $6.83 and $10.63 after discounting for the furnishings, if any.

Carter alleged that the reduced area was not 4526 square feet but was, from his own method of computation, only 3955 square feet. He challenged the respondent's method of computing reduced area by assigning full, half and quarter values to various parts of a house, based on factors such as use, standard and costs of construction or

enhancement values. This method is and has always been used by the Chief Assessor uniformly for all properties in Singapore when determining the unit rate per square foot. This, according to Dennis Tan, is a recognised method of valuation, except that the percentages of values assigned for different parts of the house may vary from country to country.

Since the object of arriving at the reduced area is to facilitate comparison between one property and another, we are of the opinion that it is immaterial how the reduced area (or effective carpet area as an alternative method) is arrived at, so long as the Chief Assessor uses the same method for all properties under consideration. We find support for our opinion in *Amies* "Law of Rating" (Vol 1) at pages 516-517,

"In measuring houses effective carpet area is used in some places and reduced covered areas in others. The object is to facilitate comparison between one property and another and the only essential is that the same method shall be used throughout the entire area under review".

This the Chief Assessor has done, not only in this case, but for all residential premises in Singapore. We accordingly approve of his method, and despite the dispute over whether a small area was "new" in 1975, we accept the reduced area of 4526 square feet. We do not think that its exclusion would in any way affect the valuation which is essentially based on Dennis Tan's opinion.

The allegation of 'inflated' rentals paid by companies

It was also contended by Mr. Selvadurai that as most of the rentals in Binjai Park relied upon by the Chief Assessor were tenancies granted to companies, they should be disregarded as companies are prepared to pay "inflated" rentals which individuals would not.

We do not see any merit in this argument because the task of the Chief Assessor was to assess a hypothetical rent. Lord Denning M.R. clearly sets out what should be considered by the valuation officer when in the Court of Appeal decision of *Reg* v. *Paddington Valuation Officer Ex parte Peachey Property Corporation Ltd*[1] he said at pages 412-13:

"The rent prescribed by the statute is a hypothetical rent, as hypothetical as the tenant. It is the rent which an imaginary tenant might reasonably be expected to pay to an imaginary landlord for a tenancy of *this* dwelling in *this* locality, on the hypothesis that both are reasonable people, the landlord not being extortionate, the tenant not being under pressure, the dwelling being vacant and to let, not subject to any control . . . the period not too short nor yet too long, simply from year to year, I do not suppose that throughout the length and breadth of Paddington you could find a rent corresponding with this imaginary rent. Take hereditament after hereditament; go through the rental returns; you will find that in case after case that the actual rent is no guide. It may be controlled or transitional; it may be a ground rent or a transitional rent; or it may be paid by an immigrant under pressure; or the like. The rent is only of use when it is a rent freely fixed in the market without a premium or any special conditions. And then you may find variations from one house to the next, from one flat to the next, so great that you cannot say from the actual rent what is the rent which may reasonably be expected. But nevertheless an expert valuer may by analysis of rental returns and by looking at comparable cases be able to form an opinion as to what rent may reasonably be expected. That is what the valuation officer says he did here."

And that was precisely what Dennis Tan had done in this instance. After analysing the rental evidence of comparable properties, he formed an opinion as to what rent may reasonably be expected of the appellant's property. He then checked his opinion by comparing the rates per square foot of the properties by reference to their respective reduced areas to confirm that the rental value he was assigning to the appellant's property was not higher than the actual rental of comparables. It was not.

There is not a shred of evidence to suggest that the rents paid for the comparables were not freely fixed in the market and we see no valid reason to reject them. We are thus satisfied that the valuation of No. 9 Binjai Walk was carried out by Dennis Tan in conformity with the statutory basis and we have not been persuaded that $28800 is not a fair and reasonable amount at which the said premises could, in 1976, have been reasonably expected to be let from year to year on the basis of a hypothetical tenancy.

The Constitutional issue

The next issue, perhaps the most important of all concerns the appellant's complaint that his constitutional right has been infringed by the respondent's valuation process. It was contended for the appellant that there exist two classes. of properties in Binjai Park, namely properties that were let out and those that were owner-occupied, and insofar as the former was concerned, there was between 1970 and 1976, "an

intentional systematic under-valuation" of owner-occupied properties in Singapore which did not undergo any changes. This was because apart from the appellant's property and No. 15 Binjai Walk, none of the other owner-occupied properties in Binjai Park was reassessed between 1970 and 1976. It was contended therefore that if there was to be any increase in the annual value for the appellant's property, this increase must also be imposed for all owner-occupied properties whether there has been any change in them or not.

In short, Mr Selvadurai strongly maintained that there must be uniformity of assessment for otherwise it would offend the equal protection clause of Article 8 of the Malaysian Constitution (actually it is Article 12 of the Singapore Constitution) which declares that –

"12.-1(1) All persons are equal before the law and entitled to equal protection of the law."

Counsel contended that as Article 12 "overrides" the Property Tax Act, the Chief Assessor's proposal and the Valuation List are therefore *ultra vires* the Constitution. He therefore advocated the discarding of the principle enunciated in the case of *Ladies Hosiery and Underwear Ltd* v. *West Middlesex Assessment Committee*[2] that correctness of assessment must not be sacrificed in order to secure uniformity, which principle has been applied throughout in Singapore. In support of his submission, he referred to the recent judgment of the Privy Council in another appeal by the appellant, *Howe Yoon Chong* v. *the Chief Assessor, Property Tax, Singapore*[3] wherein the same issue was raised and in particular to the *dictum* of Lord Fraser who, in delivering the judgment of the Board, said:

"The Constitution, being the supreme law of Singapore, will of course prevail over any law or any administrative practice inconsistent with it. Their Lordships do not in any way underrate the fundamental importance of the Constitution or of Article 8 in particular. Indeed, the importance of the equal protection clause is emphasised if, as Rajah J. said, it is not possible under the Property Tax Act for an owner of property to complain that the property of another owner is entered on the List at an undervaluation. That seems to be the accepted view in Singapore and their Lordships will assume that it is correct, although the opposite view might be maintainable in light of the provision in Section 12(1) for objections by any owner aggrieved by the inclusion of "any property" or by the annual value ascribed thereto or by "any omission" from the list. But a breach of the equal protection clause could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very substantial scale. Several authoritative decisions on the equal protection provision of the Fourteenth Amendment to the American Constitution were brought to the attention of their Lordships. Some caution is required in applying these authorities to the Constitution of Singapore but their Lordships see no reason to doubt that "intentional systematic under-valuation", such as was envisaged by the Supreme Court in *Sioux City Bridge Co* v. *Dakota County* (1922) 260 US Reports 441, would be a breach of Article 8 of the Singapore Constitution. No case of that sort was made in this appeal. Something less might perhaps suffice, but their Lordships are of opinion that, where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality would not be substantially different from the test of validity of the List. In the present case defects on the necessary scale have not been proved to exist."

As he did before the Privy Council, the Chief Assessor relied on the rule in the *Ladies Hosiery case* for the proposition that in valuing the property for rates "the assessing authority should not sacrifice correctness to ensure uniformity", per Scrutton L.J. at page 688. Their Lordships had this to say of that proposition in the context of Article 12:–

"That case did not lay down any new law. It merely decided that the (English) Rating and Valuation Act 1925 which defined the gross value of a hereditament as a rent at which it "might reasonably be expected to let from year to year" should be applied according to its terms. In the event of the corresponding provisions in sections 2 and 18(7) of the 1961 Act leading to a valuation inconsistent with the equal protection clause of the Consititution it might be that the principle of correctness would have to yield to the principle of uniformity. That question does not arise in this appeal and their Lordships express no opinion upon it."

Does it arise in the present case?

Dennis Tan in the course of his testimony stated that for the years between 1970 and 1976, the annual values of rented properties in Binjai Park were reassessed whenever the rents paid for them were revised but that in the case of owner-occupied properties, their annual values were reassessed only when his department was notified by their owners, as was done by the appellant, that their properties had been rebuilt, enlarged, altered or improved. For example, there was an amendment of the annual value of No. 15 Binjai Walk from $5,280 to $30,000 with effect from July 5, 1976 after completion of renovation works.

It would be physically impossible he said, to revise the annual values of each and every property whenever changes were effected to one simply because there are over 400,000 properties on the

Valuation List. As such, his department undertook a general reassessment once every ten years or so, as was the case in Binjai Park when there was a general reassessment of all properties in that area in 1970 and again in 1979. Section 10 of the Act evidently recognises this impossibility and explicitly allows the Chief Assessor in the exercise of his discretion "either to cause to be prepared a new Valuation List every year or to adopt the Valuation List then in force with such alterations and amendments as may have been made from time to time in accordance with the provisions of this Act".

The reply to Mr. Selvadurai's contention was aptly put by the Lord Chief Justice in *Lilley and Skinner Ltd* v. *Essex County Valuation Committee*[4] : ". . . . if revaluation is to be made it cannot be done *uno flatu* with regard to all the hereditaments in the area. The law does not compel any such impossibility.".

In considering the appellant's argument on this ground, we are guided by what the Court of Appeal said in *Howe's* case[5]

"The law, as enacted by the Act, is that each property should be assessed independently and in accordance with the provisions in the Act. In our judgment, it would be contrary to common sense, if, complying with the provisions of the Act, the Chief Assessor arrives at a correct sum for a property, his assessment is struck down as contrary to article 8(1) because other comparable properties have been incorrectly assessed by him. It would be patently absurd for a court to say to the Chief Assessor that although he had assessed a property in accordance with its correct annual value, he had acted unlawfully or *ultra vires* Article 8(1) because he should have, at the same time, corrected incorrect assessments of other comparable properties so that all comparable properties are thus uniformly assessed. In our opinion, the basic principle under the Act is that a property must be assessed independently and correctly i.e. in accordance with its annual value. Once this is done, it is immaterial that, as a consequence, other comparable properties are in fact assessed incorrectly. The remedy then would be for the Chief Assessor to correct, in accordance with the provisions of the Act, any incorrect assessment."

Digressing for a moment, we would go even further to add that the remedy is available to the appellant himself or for that matter, any owner, for contrary to what Mr. Selvadurai contended and to the views expressed by Rajah J. in the High Court, there exist provisions in sections 12 and 18 of the Property Tax Act of a statutory remedy for the correction of particular assessments: –

"12.-(1) Any owner aggrieved by the inclusion in the Valuation List of any property or by the annual value ascribed thereto or by any other statement made in or by any omission from the Valuation List may, at any time within the period allowed for inspection of the Valuation List, apply to the Chief Assessor by written notice of objection in the prescribed form, to amend the Valuation List accordingly.

(2) Such application shall state precisely the grounds on which the objection is made and the amendments desired to remove the objections.

(3) The Chief Assessor shall consider the objection and may either disallow it, or allow it either wholly or in part, and shall serve the owner by post or otherwise with written notice of his decision.

(4) Any owner dissatisfied with the decision made by the Chief Assessor under this section may, within twenty-one days after such service, appeal to the Valuation Review Board in the manner provided in section 26 of this Act.

....

18.-(1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any person interested or otherwise, and in the manner hereinafter provided, amend the Valuation List accordingly."

Quite apart from the statutory remedy, it also appears that any property owner who wishes to challenge the validity of the whole Valuation List or a substantial part of it is entitled to ask for an order of *mandamus* if it can be shown that the Chief Assessor, who is a public officer, has declined or failed to carry out his duty, and the Valuation List itself is liable to be quashed on *certiorari* if it were shown to have been prepared on a wrong basis and contrary to the statutory direction (see the judgment of the Court of Appeal in *Reg* v. *Paddington Valuation Officer Ex parte Peachey Property Corporation Ltd*[1]).

From the evidence before us, we do not find as a fact that there had been "intentional systematic under-valuation" such as was envisaged by the Supreme Court in *Sioux City Bridge Co.* v. *Dakota County*[6] and in *Cumberland Coal Co* v. *Board of Revision*[7] . The appellant has failed to show that there had been an intentional and arbitrary under-valuation adopted by the respondent. No charge of bad faith either was ever made against the respondent. Like the rest of Mr. Selvadurai's grounds, this also fails.

Conclusion

The appellant has arduously attempted to show not only that the Chief Assessor's revaluation is manifestly excessive, but also that his method

of valuation and preparation of the Valuation List are unconstitutional. But just as the *Peachey Corporation Ltd* had ambitiously attempted, and failed to pull down the whole of the *Paddington Valuation* list, so has the appellant the 1976 Valuation List.

We would accordingly dismiss these appeals.

From the above decision the appellant appealed to the High Court.

ORIGINATING MOTION.

P. Selvadurai for the appellant.
Mrs. Lucy Hangchi for the respondent.

Cur. Adv. Vult.

HIGH COURT.

Lai Kew Chai J.: In this appeal, Mr. Howe Yoon Chong, seeks to invalidate as unconstitutional the administrative practice of the Chief Assessor with regard to the 1976 annual value of his home known as No. 9 Binjai Park, Singapore ("the property"). Unlike the other case, *Howe Yoon Chong* v. *Chief Assessor*[3] where he unsuccessfully sought to invalidate the entire Valuation List of Singapore, he is in the case before me complaining that by reason of an aspect of the administrative practice of the Chief Assessor he has not been accorded the equal protection of the law under Article 12(1) of our Constitution.

If the appellant has made good his complaint, he must succeed. The Constitution is the supreme law of Singapore and its provisions of course must prevail over any administrative practice inconsistent with any of them.

The matter has arisen in this way. On its completion in 1966 the property was ascribed an annual value of $2,400. It was and remains a two-storey bungalow erected on a piece of land of 18,902 square feet and located in a high class residential estate known as "Binjai Park". Following a "general assessment" in 1970 of all properties in Binjai Park, the annual value of the property was raised to $8,400. Since the property was owner-occupied, the yearly property tax payable was only $552 and the appellant enjoyed the concessions which were universally granted by the Comptroller of Property Tax to all owner-occupiers in Singapore. Although the nett floor area of the building was 3,547 square feet, I should mention, for the sake of understanding what follows later in this judgment, that for the purpose of calculating the annual value, the Chief Assessor had in 1970 ascribed to the building in the property the 'reduced' area of 2,340 square feet, producing therefore a unit rate of annual value of $3.59 per square foot.

In December, 1975 the appellant caused to be carried out substantial alterations and additions to his home at the cost of $48,000 and notice thereof was given to the Chief Assessor under section 17(4) of The Property Tax Act, Cap. 144 ("the Act"). The number of bedrooms was increased from two to five. The new floor area of the renovated building was 5,554 square feet although, again, for the purpose of calculating annual value, the 'reduced' area was put at 4,526 square feet.

By a letter dated August 23, 1976 the Chief Assessor gave the appellant notice that he proposed amending the 1976 Valuation List by increasing the annual value of the property from $8,440 to $28,800. On the same day, the Comptroller of Property Tax gave notice under section 19(3) of the Act that property tax of $1,224 per year was payable with effect from December 1, 1975. The appellant objected unsuccessfully before the Valuation Review Board. A valuer of the Chief Assessor's office explained how the proposed annual value of $28,800 was arrived at. He said in evidence that he made a study of the actual rentals of two-storey bungalows in the Binjai Park. The monthly comparables ranged from $2,200 for an unfurnished letting to $4,750 on a furnished basis. In his opinion, he thought that the monthly rental value of the property was $2,400 unfurnished, or $28,800 per annum. Applying this estimate to its 'reduced' area of 4,526 square feet, he obtained a unit rate per square foot of $6.37 which he considered as fair and reasonable because the unit rates of other comparable properties had ranged between $6.83 and $10.63 per square foot, after discounting the furnishings, where appropriate.

Now, it is clearly established in the cross-examination of the valuer of the Chief Assessor's office that in view of Government's policy to encourage home ownership, the shortage of valuers and the administrative difficulties involved in having to assess the annual values of some 400,000 properties in Singapore, it was decided by the Chief Assessor as a matter of administrative policy and practice that with regard only to owner-occupied properties in Singapore, there would

only be a "general assessment" of the annual values once in every 9 or 10 years, unless such owners carried out renovations or unless such owners had ceased to occupy their properties and had let them out.

I now come to the pith and substance of the appellant's complaint. He says that as he had retained his owner-occupier status throughout, the property should not have been assessed on the rental values current in 1976, which assessment prematurely took him out of the owner-occupier class. He readily concedes that there should be a proportionate increase in the annual value but he says he was unfairly treated if he were to be foisted with the increase of a notional rental value. On the basis of the appellant's contention, the unit rate of $3.59 should have been multiplied by the new 'reduced' area of 4,526 square feet, which would have produced the annual value of only $16,240. He submits that this annual value should have been applied until the next "general assessment" of annual values in 1979 or 1980 of properties in Binjai Park.

In my judgment, the administrative practice carried out in this case was inconsistent with the provisions of Article 12(1) of our Constitution. The appellant should have been accorded the privilege of other owner-occupiers until the next "general assessment" in 1979 or 1980. Any increase in the annual value of the property should have been limited to the unit rate per square foot current in 1970 which should be applied to what is technically called the new 'reduced' area. The appellant, as an owner-occupier, was in 1976 similarly situated in all material respects with other owner-occupiers whose properties were fortuitously not renovated. To have treated him differently as though he had notionally let out his property for the purpose of determining the annual value was to make a distinction without a difference.

The unfairness of the administrative practice may be illustrated by an example. Suppose, a bungalow in Binjai Park in 1970 had a 'reduced' area of 4,526 square feet. As a result of the "general assessment" carried out in 1970, the annual value of that bungalow would only be $16,240. If it were owner-occupied throughout the decade from 1970 during which no renovations were carried out, the annual value would remain unamended until the next "general assessment" in 1979 or 1980. In terms of both the status of owner-occupation and the 'reduced' area, the bungalow is exactly the same as the property of the appellant. Yet, the annual value of the property of the appellant was raised to $28,800 although, in spite of the renovations, the 'reduced' area of the property of the appellant is exactly the same as that of the bungalow I have mentioned. This illustration is not at all farfetched, seeing that the 'reduced' area of another owner-occupied property in Binjai Park and known as No. 63 Binjai Park, Singapore is near enough to that of the hypothetical example I have mentioned. The appellant's property and the hypothetical example I mentioned are similar in all material respects. There is no rhyme or reason to treat them differently.

A careful analysis of the Privy Council's decision in the other case in which the appellant was also involved would demonstrate (a) that the *ratio decidendi* of that case, limited to the facts which the appellant was able to prove in that case, does not apply to our case; and (b) that the *obiter dicta* in that case, which were inapplicable in that other case, fairly and squarely govern the facts established in this case. The Valuation Review Board failed to appreciate these crucial distinctions and were accordingly wrong in law. Let me explain. In the other case, the "high water mark of the evidence" was contained in the affidavit evidence of one Mr. Ronald Chua. After pointing out the shortage of manpower, he said that "the Valuation List was inevitably a patchwork of annual values fixed at different dates and over a period of many years. Generally speaking only a small number of the total number of properties in the Valuation List were reassessed in any year." He was countered by an affidavit from the Deputy Chief Valuer in the Property Tax Division who said that the Valuation List was constantly kept up to date, which evidence is a trifle baffling having regard to the evidence in this case on the practice of "general assessment" once every ten years or so. In the result, the *ratio decidendi* of that case is that where there are errors in the Valuation List owing to any inadvertence or inefficiency such errors must be on a massive scale before the Valuation List may be declared invalid on the ground that the equal protection clause in Article 12(1) of our Constitution was infringed. That *ratio decidendi* has no application to the case before me because I am not concerned with either inadvertence or inefficiency, in neither of which does the intention of the Chief Assessor comes into play at all. There is, in this case, clear

evidence that a "general assessment" was as a matter of administrative policy carried out once every 9 or 10 years on the annual values of owner-occupied properties in Singapore, or in Binjai Park at any rate, unless any such owner in the meantime renovated his property, in which case, the annual value of such a property was assessed strictly according to the provisions of the Act. One has in the case before me a deliberate administrative policy and the consequential effect of the implementation of an aspect of that policy.

On the other hand, the Privy Council in stressing the supremacy of the provisions of our Constitution pointed out that, in its view, an intentional and systematic under-valuation of the type and nature considered by the United States Supreme Court in *Sioux City Bridge Co.* v. *Dakota Country*[6] would be contrary to the equal protection clause. Lord Fraser of Tullybelton at p. 53 ventured the further opinion that "(s)omething less might perhaps suffice . . ."

The other *dicta* of Lord Fraser of Tullybelton which I wish to quote is in the following terms at p. 53:

> "In the event of the . . . provisions of sections 2 and 18(7) of the . . . (Property Tax) Act leading to a valuation inconsistent with the equal protection clause of the (Singapore) Constitution, it might be that the principle of correctness (in determining the annual value) would have to yield to the principle of uniformity."
>
> [The words within the brackets are added by me to provide the reference and context.]

Although these were *obiter dicta* of the Privy Council, I say most respectfully that they are not only highly persuasive but are most apt when applied to the case before me. In the circumstances, I would allow the appeal with costs and declare that applying the principle of uniformity to the appellant, the annual value of the property for the year 1976 should be $16,240.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*

K. ABDUL RASHEED v. PUBLIC PROSECUTOR AH CHAK ARNOLD v. PUBLIC PROSECUTOR

[A.Cr.J. (Lai Kew Chai J.) January 4, 1985]

[Singapore – Magistrate's Appeal Nos. 41 & 78 of 1984]

Criminal Law & Procedure – Acquittal – Court's discretionary power to direct an acquittal – Meaning of phrase "he (the Public Prosecutor) will not further prosecute the defendant upon the charge" in Criminal Procedure Code (Cap. 113), s. 183.

In Magistrate's Appeal No. 78 of 1984, Arnold Ah Chak, a detective sergeant of the Singapore Police Force, faced two charges that he on two different days in June, 1983 did corruptly obtain for himself from two prostitutes gratification in the form of sexual intercourse as inducements to return them their passports and not putting them on the blacklist for immigration purposes. He was alleged to have committed offences under section 6(a) of the Prevention of Corruption Act (Cap. 104). When the case was called on for hearing on March 26, 1984, the learned Deputy Public Prosecutor applied for the accused to be discharged not amounting to an acquittal in respect of the two charges as the prosecution could not go on due to the fact that the two prostitutes, as principal witnesses for the prosecution, were not available. The learned District Judge ordered that the accused be discharged not amounting to an acquittal on the two charges. His sole ground was that the prosecution was unable to proceed because of the unavailability of the two witnesses. Since it was not withdrawing the charges, the prosecution had not informed the court that "(it) will not further prosecute the (accused) upon the charge(s)" within the meaning of that phrase (as substituted) in sub-section 183(1) of the Criminal Procedure Code. He accordingly held that "there was nothing (in the provisions of the Criminal Procedure Code) which could empower (him) to discharge the accused amounting to an acquittal".

In Magistrate's Appeal No. 41 of 1984, K. Abdul Rasheed was charged with the offence of having in May, 1982 with two named persons and in furtherance of their common intention committed theft of two sums of cash under section 380 read with section 34 of the Penal Code (Cap. 103). When the case came on hearing on February 16, 1984 before the learned District Judge, the prosecuting officer applied for an order that the accused be given a discharge not amounting to an acquittal. Counsel for the accused objected and asked for an acquittal. The case was stood down. At the resumption of the case in the afternoon, the District Judge understood the prosecution to say that it was not withdrawing the charge, although the records show that the prosecution had merely renewed its application for a discharge not amounting to an acquittal. The prosecution did not inform the court of the reason or reasons why it was not going on with the prosecution beyond that stage.

Held: (1) in exercising its power under sub-section 183(2) of the Criminal Procedure Code, a court must bear in mind and give due regard to the right of the prosecution to proceed at a later stage. On the other hand, there is ample persuasive authority for the proposition that unless some good ground is shown it would not be right to leave